

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**Brandon Dietrich d/b/a Dietrich
Manure Tanking**

Keokuk County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO-28**

**TO: Brandon Dietrich
2515 N Avenue
Williamsburg, IA 52361**

I. SUMMARY

This administrative consent order (order) is entered into between Brandon Dietrich d/b/a Dietrich Manure Tanking and the Iowa Department of Natural Resources (Department). Mr. Dietrich hereby agrees to ensure that he is properly certified to land apply manure, apply manure in a manner that does not produce runoff to a water of the state and pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Brian Lee, Environmental Specialist
IDNR Field Office #6
1004 W. Madison
Washington, IA 50309
319/653-2135

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Brandon Dietrich d/b/a Dietrich Manure Tanking**

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. On November 17, 2009, the Department received a complaint alleging that manure from Prestage Farms of Iowa, LLC (Prestage Farms), which had been land applied to a field located in the NE ¼ of Section 8, Adams Township, Keokuk County, was running off into a box culvert that serves as the head waters of a stream. The box culvert is located on 110th Street.

2. Following receipt of the complaint Brian Lee, an Environmental Specialist with the Department, investigated. Mr. Lee took samples of water at the 110th Street box culvert and at the 120th Street bridge crossing, which is downstream of the above mentioned field. These samples were sent to the University Hygienic Laboratory for analysis. The samples indicated that ammonia levels were elevated. The results are below:

Box Culvert at 110th Street: Ammonia 17 mg/L, Fecal 2200 MPN/100mL

Bridge 120th Street: Ammonia 2.6 mg/L, Fecal 4600 MPN/100mL

Mr. Lee concluded that the manure was coming from a field located in the NE 1/4 of Section 5, Adams Township, Keokuk County. The fields located in section 8 and 5 drain to the box culvert at 110th street. However, the field in section 8 is not farmed and did not have manure applied to it.

3. Upon receipt of the sample results, on December 2, 2009, Mr. Lee contacted Justin Ray of Prestage Farms to confirm the origin of the manure that was applied to the field. Mr. Ray informed Mr. Lee that Prestage Farms had hired Brandon Dietrich to land apply the manure. Records indicate that manure was injected on the field on November 12-13, 2009. Mr. Ray informed Mr. Lee that the field had not been ripped prior to manure injection and that may have led to manure running off.

4. On December 3, 2009, a Notice of Violation (NOV) was mailed to Mr. Dietrich for a prohibited discharge to a water of the state.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Brandon Dietrich d/b/a Dietrich Manure Tanking**

5. On December 21, 2009, Mr. Dietrich was mailed an NOV for land applying manure without the proper certification. Mr. Dietrich took the class required for certification on February 10, 2009, however he never paid the certification fee. Because the fee was not paid, he was not certified when he land applied manure for Prestage Farms.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Mr. Dietrich land applied manure in a manner which resulted in discharge to a water of the state. Therefore the above-mentioned facts indicate a violation of this provision.

4. Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Runoff containing manure was documented to have reached a water of the state. Therefore, the above stated facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the Department orders and Mr. Dietrich agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. In the future ensure that you are properly certified before you apply or otherwise handle manure; and

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

Brandon Dietrich d/b/a Dietrich Manure Tanking

2. Pay a penalty of \$5,000.00 within 30 days of the Director of the Department signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty is determined in accordance with the following:

Economic Benefit – Prestage Farms paid Mr. Dietrich \$7,051.02 to land apply manure on November 12-13, 2009. Because Mr. Dietrich was not properly certified he should not have land applied the manure. Thus, all profit earned from the November application should be considered an economic benefit. However, the Department has decided to handle this matter administratively, therefore, \$1,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Manure was released to a water of the state, and it was applied without proper certification. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – All manure applicators have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. Mr. Dietrich specializes in manure application, yet he land applied it in a manner which caused water quality violations and he failed to ensure that he was properly certified. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

Brandon Dietrich d/b/a Dietrich Manure Tanking

into knowingly by and with the consent of Mr. Dietrich. By signature to this order, all rights to appeal this order are waived.

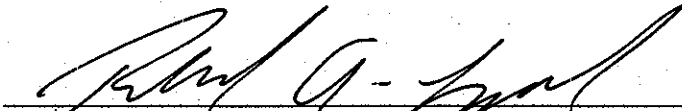
VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Brandon Dietrich

Dated this 24 day of
May, 2010.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27 day of
May, 2010.

Brandon Dietrich, Field Office 2, Carrie Schoenebaum; Brian Lee, I.C.1, & I.C.6.a.